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INTEMPERANCE

AND

CRIME.

BY NOAH DAVIS.

CHIEF JUSTICE OF THE SUPREME COURT OF NEW YORK.

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PREFACE.

THE following paper was kindly prepared by Chief Justice Noah Davis, by special invitation, for a Parlor Conference, one of a series now being held under the auspices of the National Temperance Society.

It was read by the author on the evening of December 17, 1878, in the parlors of Hon. Wm. E. Dodge, President of the Society, and listened to with profound attention by a large number of guests, including many distinguished representatives of the professional and mercantile life of the metropolis.

5/3/68.

INTEMPERANCE AND CRIME.

I AM invited to speak to-night of the relations of intemperance to crime. The theme is a hackneyed one, as old as alcohol, and one can not consider it without a sort of anger at the selfishness of the men of past generations, who have said all our good things before we were born. Little is left to us but to array their testimonies and confirm them by our own experiences.

No one doubts the existence of sin. Throughout Christendom a million spires rise to heaven in proof and condemnation of it. Yet the ugly fact remains, and will, until the devil is finally chained to make room for the millennium. But this is no argument against the reiteration of godly preaching and Gospel truth. Said Chief Justice Marshall, to a lawyer who began his argument in the Garden of Eden: "It is safe to assume that the court knows something." On that authority I shall assume that this audience knows, *by hear say*, of the existence of crime and intemperance, and proceed to speak of their correlations. It is not quite sus-

ceptible of proof that the relation of intemperance to crime is that of *causa causans*. There are other causes, such as hate, avarice, jealousy, lust, and revenge; but these are narrower in their circles of evil; more easily repressed by individuals and society; more subject to moral influences and restraints, and are not sanctioned by law nor dealt out under statutory licenses.

But among all causes of crime, intemperance stands out the "unapproachable chief." This fact may be established both affirmatively and negatively. It is proved by the existence of intemperance, and equally as well by its non-existence; just as the tides of the ocean may be proved by the flood and by the ebb. First, let us briefly consider the proof by existence. The proposition is, that whenever and wherever intemperance is most prevalent, crime is most abundant. Crime is the mercury of a political and moral thermometer which intemperance and its opposite affect as heat and cold. This recognized fact has created an elementary principle in the criminal common law—that drunkenness is no excuse for crime.

No principle is better, or was earlier, settled, and it was rested upon the manifest fact that, if

allowed as an excuse, all crime would prepare and fortify itself by intoxication. Hence courts, even in capital cases, were compelled to treat drunkenness as an aggravation of crime, and to hold that a drunken intent was equally as felonious as a sober one. In common acceptance, the drunken man is temporarily insane. It is fortunate that in a country where making drunk was a business licensed by law as a source of governmental revenue the wisdom of judges discarded popular notions, and the natural inference from that kind of legislation, and gave us principles and rules by inheritance which I fear we would not have had the virtue to originate. Intoxicating drinks enable men to commit crimes by firing the passions and quenching the conscience. Burke, the Irish murderer, whose horrible mode of committing his crimes has taken his own name, in his confession states that only once did he feel any restraint of conscience. That was when he was about to kill an infant child. The babe looked up and smiled in his face, "but," said he, "I drank a large glass of brandy, and then I had no remorse." His case is one of thousands. Many times in my own experience have young men looked up

to me, when asked what they had to say why the sentence of the law should not be pronounced, and falteringly said: "I was drunk; I would not and could not have done it had I not been drunk."

That habits of intemperance are the chief cause of crime is the testimony of all judges of large experience. More than two hundred years ago Sir Matthew Hale, then Chief Justice of England, to whom as a writer and judge we are greatly indebted for our own criminal law, speaking on this subject, said: "The places of judicature I have long held in this kingdom, have given me an opportunity to observe the original cause of most of the enormities that have been committed for the space of nearly twenty years, and by due observation I have found that if the murders and manslaughters, the burglaries and robberies, the riots and tumults, the adulteries, fornications, rapes, and other enormities that have happened in that time were divided into five parts, four of them have been the issue and product of excessive drinking—of tavern and ale-house drinking." Leaping over two hundred years of English history and jurisprudence, I call one other emi-

nent judge of great experience to testify. Lord Chief-Baron Kelly, perhaps the oldest judge now on the English bench, says in a letter to the Arch-deacon of Canterbury: "Two-thirds of the crimes which come before the courts of law of this country are occasioned chiefly by intemperance."

Not less explicit is the testimony of those whose official duties have brought them in contact with convicted criminals. Speaking of intemperance, the Chaplain of the Preston House of Correction said: "Nine-tenths of the English crime requiring to be dealt with by law arises from the English sin, which the law scarcely discourages." And the late inspector of English prisons says: "I am within the truth when I state that in four cases out of five, when an offense has been committed, intoxicating drink has been one of the causes." The reason for this is not found in English skies. A committee of the House of Commons of the Dominion of Canada, reporting in 1875, state that "out of 28,289 commitments to the jails of the provinces of Ontario and Quebec, during the three previous years, 21,236 were committed either for drunkenness or for crimes perpetrated under the influence of drink."

This is not a mere provincial imitation of the fashions of the mother country; for, alas! in our own land, under our beloved republican institutions, the same startling facts exist. Massachusetts, great keeper of Plymouth Rock and of the virtues that landed there, tells the same tale. The report of her State Board of Charities for 1869 says: "The proportion of crime traceable to this great vice must be set down, as heretofore, at not less than four-fifths," and her inspectors of State prisons in 1868 gave the same proportion. Coming closer home, we have the testimony of our Board of Police Justices in their report of 1874: "We are fully satisfied," say they, "that intoxication is the one great leading cause that renders the existence of our police courts necessary."

Of seventeen cases of murder, examined separately by Dr. Harris, corresponding secretary of the Prison Association, fourteen were instigated by intoxicating drinks. The line of witnesses might stretch out to the crack of doom. The case would only be a little stronger. It is established beyond argument by official statistics, by the experience of courts, and by the observation of enlightened philanthropists, that

the prevalence of intemperance in every country is the standard by which its crimes may be measured. Whatever man or woman can do that checks intemperance, diminishes crime, lessens vice and misery, and promotes virtue and happiness. Whatever man or woman does do that spreads intemperance, increases crime, promotes vice and misery, and lessens virtue and happiness. The State has no soul to damn. The corporation of New York will never stand at the great judgment bar. The official who goes in to-day and out to-morrow will carry his own load of vice or meed of virtue; but neither State nor municipality will ever rise to the simplest of all duties—the prevention of crime and misery at the fountain-head—until the people are brought by individual effort to realize the necessity of that heroism.

The relation of intemperance to crime is also strikingly shown by the diminution of the latter wherever the former is wholly or partially suppressed.

Whether the suppression be the result of prohibitory laws, or of the efforts of the advocates of temperance, makes no difference with the general truth of the proposition. Taken in all

its aspects, perhaps the most wonderful temperance reformation of any age was that led by Father Mathew in Ireland. I can not speak his name without emotions of deepest veneration. Worthier he than all others to be called the patron saint of Ireland. Before the close of October, 1838, Father Mathew had enrolled more than 250,000 names on his pledges of total abstinence. Well, names are nothing. Things are much. Lord Morpeth, when Secretary for Ireland, in an address on the condition of Ireland, gave these statistics. Of cases of murder, attempts at murder, offenses against the person, aggravated assaults, and cutting and maiming—there were, he says, in 1837, 12,096; 1838, 11,058; 1839, 1,097; 1840, 173.

Between 1838 and 1840 the consumption of spirits in Ireland had fallen off 5,000,000 gallons; the public-houses where liquors were retailed had lessened by 237 in the city of Dublin alone; the persons imprisoned in the Bridewell (the principal city prison), had fallen in a single year from 136 to 23, and more than 100 cells in the Bridewell being empty, the Smithfield prison was actually closed.

To what can be attributed this amazing array

of facts and figures? Not to war, nor to pestilence, nor to famine, for these are, unhappily, the begetters of crime. Not to a sterner execution of the laws, nor to greater severity of punishments, for these always relax as crime diminishes. Not to changes in the excise laws of the country, for they, for the most part, remained intact. No, it must stand as an historic truth that one bold, humane man, planting himself on the rock of temperance, and supplementing his priestly power with Christian charity and love, by his burning zeal and eloquence awoke all the emotional nature of his volatile race, and built up a barrier of voluntary pledges between them and the great curse of their country.

Something analogous is even now in progress in our city. Analogous in that its leader and advocate is an Irishman full of the enthusiastic eloquence of the Irish nature; in that its motive power is humanity and love; in that its chief object is the rescue of the fallen victims of drink; in that it seeks to reach the intellect through the avenues of the heart, by appeals to man's better nature; and God grant that it

may be analogous also in the might of its extent and influence !

I have selected the one strong example of the repression of crime by the successful efforts of the friends of temperance not because it stands alone, but because time will not permit the detail of more. I feel bound to add, however, that in my judgment the efforts of temperance organizations in our country, whatever we may think of the wisdom or discretion of some of their modes of action, have done more to prevent crime by spreading and maintaining temperance, especially among our rural populations, than all our numerous and complicated systems of police. .

The relation of intemperance to crime is also plainly manifest where drunkenness is repressed by partial or complete prohibition. The cases of towns and villages where, by the arrangements of their founders, no liquors or intoxicating drinks have ever been allowed to be sold, furnish strong evidence. Vineland, with its 10,000 people, without a grog-shop, and with a police force of one constable, who is also overseer of the poor (with a salary for both offices

of \$75), reports in some years a single crime, and a poor-rate swelling to the aggregate of \$4 a year. Greeley, in Colorado, is another town of 3,000 people, and no liquor-shop. It uses and needs no police force, and in two years and a half \$7 only was called out of its poor-fund. Bavaria, Illinois, a town of the same population, with absolute prohibition, was without a drunkard, without a pauper, and without a crime. A small town in Western New York was founded some years ago by a gentleman who made it a condition in all his title-deeds, that if liquors were sold, the land should revert to him. The condition became the subject of litigation in our courts, and was held to be valid and enforceable by ejectment.

I well recollect when that case was argued before the General Term, of which I was then a member, that a very distinguished lawyer and politician, not long since the president of the State Convention of his party, came up to the bench after the argument, and said to me: "Judge, if I had been arguing that case I should have made a stronger constitutional objection." "Well," said I, "what objection would you have made?" "Why," he replied,

“that the provision is plainly a violation of the Constitution, inasmuch as it prevented free speech.” “How so?” I asked. “Why, don’t you see,” said he, “that it would be utterly impossible ever to hold a political meeting of my party there?” That village has none of the incidents of intemperance; and the same thing is true of numerous other places whose founders have established prohibition.

It may be said that these are not fair examples, because the inhabitants were all teetotalers or temperance men. They are less conclusive, perhaps, but they certainly show the value of the absence of temptation. How is it, then, where prohibition exists by absolute law? I will not take Maine, the hackneyed theme of so many contradictions, further than to state that in 1870 her convictions for crime under prohibition were only 431, or one in every 1,689, while in our State (exclusive of this city), under license, the convictions were 5,473, or one in every 620 souls. Can it be that the rural population of New York is so much more addicted to crime than the people of Maine?

But take Connecticut—commonly called “the land of steady habits.” Under the prohibition

law of 1854, crime is shown to have diminished 75 per cent. On the restoration of license in 1873, crime increased 50 per cent. in a single year, and in two years in Hartford, according to official returns presented by the Rev. Mr. Walker, crime increased in that city 400 per cent. In New London the prison was empty, and the jailer out of business for awhile after prohibition went into effect. Connecticut has now a local option act. Under it New London lately voted for no license.

I found in the New York *Herald*, a few mornings ago, a letter from New London lamenting at great length the present sufferings of thirsty souls in that city. The concluding portions of the letter are so naïve and so much to my purpose that you will pardon me for reading them :

“There are, of course, two sides to the question, and one of them is perhaps exhibited in the records of the police of this town for the month during which the prohibitory law has been in operation. The ‘force’ consists of a captain, a sergeant, and five patrolmen. The captain states that the number of arrests for intoxication heretofore averaged between thirty-

five and fifty per month. Seven was the number for November—in fact, it was only six, as one of them got tipsy on the night before the law went into operation, but was not arrested until the following day. The whole number of arrests on all charges each month is about 100, and the number of persons locked up on other charges than drunkenness shows a corresponding decrease, because many crimes grow out of that.

“Another point is that the class of persons most injured by drinking find it impossible to obtain liquor. The poor wretch who on Saturday night would get drunk and squander his week’s earnings can find no one to sell him rum, because no sooner does he venture in the streets in a drunken condition than he is arrested and forced to testify against those who sold him the liquor. That class of excessive drinkers is thus benefited by the law, and it is to bring this about that the moderate drinkers suffer annoyance and strangers total deprivation.

“Again, the houses where gambling and other vices flourish complain of the new law. It seems odd at the first blush that they should be afraid to break one law in establishments

which depend for their existence upon the infringement of another, but it will be seen that if their customers become intoxicated they would be the means of calling attention to the places where the liquor was obtained, and that would lead to the latter being closed. Cider is about the only drink to be found in such places, and as a consequence they are less frequented than formerly. There is nothing to over-stimulate the nerves or fire the blood in a glass of acrid New England apple-juice—quite the contrary, indeed, is its effect. New Haven has voted to abolish the licensing of the liquor-traffic by a majority of one thousand, and probably the same grave and funny aspects of the case will be found there.”

But we have had a striking example in our own city. The Metropolitan Excise Law of 1866 was absolutely prohibitory on Sundays. Prior to that law there had been no material difference in the number of arrests made on that day and on other days of the week. Taking Tuesdays for comparison, there were from January 1, 1867, to October 1, 1868, of Tuesday arrests 11,034, of Sunday arrests 5,263, showing a difference of 5,771. A larger differ-

ence probably prevails under our present law, and the older citizens talk of the quiet and good order that now exist on Sundays, as in striking contrast to the condition of things when liquors were freely sold on the Sabbath.

On the day of our annual elections a statute draws around each polling-place a circle of absolute prohibition, within which no intoxicating drinks may be sold or given. Contrasted with former days, who fails to recognize the change from excitement, disorder, and crime to almost universal quietude and peace? And who does not see that the measure of peace depends upon the vigilance with which the police enforce the statute? During the spasmodic efforts of the police authorities of this city about one year ago to enforce the Excise law, one of the Police Commissioners told me that in his opinion arrests for crime (other than for breaches of the Excise laws) had fallen off between thirty and forty per cent. Yet there was no general and complete enforcement of the law. This fact speaks volumes for what might be accomplished in New York.

But I am not here to argue for prohibition. My sole purpose is to establish that intemper-

ance is an evil factor in crime by showing that whatever limits or suppresses the one, diminishes the other in a ratio almost mathematically certain. Whether judging from the declared judicial experience of others, or from my own, or from carefully collected statistics running through many series of years, I believe it entirely safe to say that one-half of all the crime of this country and of Great Britain is caused by the intemperate use of intoxicating liquors; and that of the crimes involving personal violence, certainly three-fourths are chargeable to the same cause.

The practical question is: What can be done about it?

If intemperance were a new evil, coming in upon us for the first time like a pestilence from some foreign shore, laden with its awful burden of disease, pauperism, and crime, with what horror would the nation contemplate its monstrous approach. What severity of laws, what stringencies of quarantine, what activities of resistance would be suddenly aroused. But, alas! it is no new evil. It surrounds us like an atmosphere, as it has our fathers through countless generations. It perverts judgments, it

poisons habits, it sways passions, it taints churches, and sears consciences. It seizes the enginery of our legislation, and by it creates a moral phenomenon of perpetual motion, which nature denies to physics; for it licenses and empowers itself to beget in endless rounds the wrongs, vices, and crimes which society is organized to prevent; and, worst of all for our country, it encoils parties like the serpents of Laocoon, and crushes in its folds the spirit of patriotism and virtue.

Is the case, then, utterly hopeless? No; not while the spirit of Christ has a tabernacle on earth.

The duties of the present hour lie immediately before us:

First.—To see to it that our present excise laws take no step backward. The outcry that the present laws must be changed because they can not be enforced is insidious and false. They can be enforced. The fault is not in them, but in faithless officials, who in cowardice dare not or in treachery will not obey the plain letter and spirit of their injunctions. If the present laws were decently enforced, there would not be to-day in the city of New York one place

where liquors could be sold by the drink which is not in fact a public inn, necessary for the actual accommodation of travelers, and having all the conveniences essential to such accommodation, and kept by a person morally fit to be trusted with the responsibilities which the law devolves upon inn-keepers and exacts from them as licensed venders of intoxicating drinks.

Second.—It is our duty to stand by those who seek to enforce the law and compel official obedience to its provisions. Dr. Crosby's organization commands respect and deserves support. It asks nothing of its enemies but obedience to the law, and nothing of its friends but to aid it in compelling such obedience.

Third.—Since all the courts have given their final sanction to the act for the protection of women and childhood from the injuries drunkenness visits upon innocence, there is no excuse for us if we do not see that that law is put in vigorous operation. If enforced, it will give many a wife a sober husband and many a child a sober father, for the fear of the law will be the beginning of wisdom to many a drunkard-maker.

Lastly.—We ought to stand by and encourage

the reform that is reaching the hand of brotherhood and love to the thousands of drinking men and women in our city. Francis Murphy should be armed with our sympathy, our prayers, and our means to aid his noble work ; and, most of all, the victims of rum who are bravely striving with his aid to reclaim themselves should be helped and encouraged in their efforts, not by alms that demoralize and debase, but by employment that will encourage self-reliance and strengthen the hopes of permanent reform. What is to hinder an organization for such a purpose, with good men and capital enough to make it effective ! A hundred thousand dollars devoted to that end would be returned to the community an hundredfold in saved taxes, increased industries, and, above all, in men, women, and children rescued from the miseries, vices, and crimes of drunkenness.

